IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2393 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

B.C.PATEL

Versus

DY INSPECTOR GENERAL OF POLICE

Appearance:

MR YN OZA for Petitioner

Ms MANISHA LAVKUMAR, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/04/2001

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the order dated 10.1.1986 passed by the Deputy Inspector General of Police, Saurashtra North Region at Rajkot suspending the petitioner from service on the ground that the petitioner

was involved in a corruption case accepting a bribe of Rs.1000/- for which the petitioner was charged for an offence under Section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947 which offence was registered as C.R. No. 10 of 1985 at Bhuj ACB Police Station.

2. It appears that earlier when the petition reached final hearing after about 13 years, the learned counsel for the petitioner had made a grievance that the two IPS officers involved in a serious case of landing of sophisticated arms, ammunition, silver and RDX at Porbandar and having connection with the members of the international terrorist gang were not placed under suspension and that, therefore, there was no reason for placing the petitioner under suspension. It appears that ultimately that grievance was made the subject matter of a public interest petition and it is stated at the Bar by Mr Oza for the petitioner that the said petition has been disposed of with certain directions. It is, therefore, not necessary for this Court to go into the question about justification or otherwise for not placing those police officers of Porbandar under suspension.

3. The Court is concerned with the facts of the present case whether there was any error in the order of suspension passed against the present petitioner on the charge that he was involved in a corruption case.

4. Mr Oza for the petitioner, however, submits that in a similar case being Special Civil Application No. 8005 of 1992 this Court has held that even if an officer is suspended on the charge of grave misconduct amounting to lack of intergrity and if there was interim stay against the order of suspension which continued for 8 years, there would be no justification in permitting the suspension order to operate at the belated stage when the petition comes up for hearing after 8 years.

5. The decision appears to have been rendered in the peculiar facts of that case. If the decision were to be construed as laying down a particular principle that the order of suspension once stayed cannot be permitted to operate after a number of years, the principle does not commend to this Court. On the contrary, it would be a sad commentary on the operation of the legal system that such cases are not being heard for such a long period.

6. Mr Oza next contended that the criminal case on the basis of which the suspension order was passed is being tried before the concerned trial Court and is

likely to be decided very soon. Since the legality and validity of the impugned order of suspension is to be decided on the well settled test whether the employee is involved in a serious offence/misconduct and whether continuance of such an employee in active public service would be conducive to or against public interest, it is not necessary to await the outcome of the criminal trial. Ultimately, the decision of the criminal Court and the decision of the higher Court in appeal, if any, will finally determine the question whether any penalty was required to be imposed on the petitioner or whether the period of suspension should be treated as such. However, all these questions need not detain the Court in the present proceedings which have unfortunately remained pending for almost 15 years.

7. In view of the above discussion, the Court sees no justification not to proceed with the hearing of the petition. In view of the fact that the petitioner was involved in a serious corruption case and the continuance of the petitioner would not be conducive to the public interest but would be contrary to public interest, the Court sees no infirmity in the legality of the impugned order of suspension.

The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

(M.S. Shah, J.)

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